IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

FRIENDSHIP VILLAGE OF MILL CREEK, NFP d/b/a GREENFIELDS OF GENEVA,	)	
Plaintiff,	)	
v.	)	Case No.
LEND LEASE (US) CONSTRUCTION, INC.,	)	
Defendant.	)	

COMPLAINT OF FRIENDSHIP VILLAGE OF
MILL CREEK NFP d/b/a GREENFIELDS OF GENEVA

NOW COMES, Friendship Village of Mill Creek, NFP d/b/a Greenfields of Geneva ("Greenfields"), Plaintiff, by and through its attorneys in this respect, Charles B. Lewis, Benjamin A. Johnston, and Tat-yeung Shiu and Duane Morris LLP, and for its Complaint against Lend Lease (US) Construction, Inc. ("Lend Lease"), states as follows:

PARTIES AND JURISDICTION

1. Greenfields is an Illinois not-for-profit corporation operating a Continuing Care Retirement Community ("CCRC") in Geneva, Illinois. Its corporate headquarters is located at 350 West Schaumburg Road, Schaumburg, Illinois.

2. Lend Lease, formerly known as Bovis Lend Lease, Inc., is a General Contractor, headquartered in New York, New York with offices in various major cities in the U.S. Its Chicago office is located at 1 North Wacker Drive, Suite 850, Chicago, Illinois, 60606. Lend Lease is incorporated in the State of Florida.

3. Jurisdiction is proper before this Court under 28 U.S.C. § 1332(a)(1) because Greenfields and Lend Lease are citizens of different states and the matter in controversy exceeds the sum of $75,00.00, exclusive of interest and costs.

4. Venue is proper in this judicial District pursuant to 28 U.S.C. § 1391(b) and (c) because a substantial part of the events or omissions giving rise to the claims occurred in this District.

STATEMENT OF FACTS

5. On June 9, 2010, Greenfields entered into an agreement[1] with Lend Lease under Lend Lease's former corporate name, Bovis Lend Lease, Inc.[2], (the "Agreement") for the construction of Greenfields' CCRC consisting of 147 Independent Living units, 51 Assisted Living units, 26 Memory Support Assisted Living units, 43 Skilled Nursing units and related common areas, located at 0N801 Friendship Way, Geneva, Illinois (the "Project"). A copy of the Agreement, with all its exhibits, is attached as **Exhibit B**.

A. Late Project Completion by Lend Lease

6. Construction on the Project began on or about September 1, 2010.

7. Before occupancy, Greenfields was required to obtain a Certificate of Occupancy from the Kane County Building and Zoning Division. To obtain a Certificate of Occupancy, the Project had to be inspected and approved by the Kane County Building and Zoning Division inspectors (respectively "County Inspection" and "County Inspectors").

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[1] The Agreement consists of two parts – A111, Standard Form of Agreement Between Owner and Contractor for Cost of the Work Plus a Fee with a negotiated Guaranteed Maximum Price, and A201, General Conditions of the Contract for Construction.

[2] Bovis Lend Lease, Inc. changed its entity name to Lend Lease (US) Construction, Inc. on May 25, 2011. A copy of the Online Corporation file Detail Report from Illinois Secretary of State is attached as **Exhibit A**.

8. Prior to the County Inspection, Greenfields and Lend Lease were required to coordinate and complete a Project final walk through. The Project final walk through was scheduled for September 9, 2011, in accordance with the scheduled date of completion for the first units of the Project, October 31, 2011.

9. On September 9, 2011, consistent with the Project schedule and prior to the final walk through by the County Inspectors, discoloration was noted around an electrical cover plate in a unit. Upon further inspection it was discovered that there was standing water on the exterior side of the vapor barrier in the wall cavity throughout the Independent Living units and common areas. The Project specifications required the installation of a "smart" vapor barrier that would allow water vapor to penetrate the barrier while keeping water out of the building. Instead, a less expensive vapor barrier was installed by Lend Lease's subcontractor that lacked the "smart" characteristics specified for the vapor barrier.

10. This non-specified vapor barrier trapped condensation in the wall, causing water to collect at the wood stud framing and resulting in extensive water damage to the building enclosure. Upon further investigation, it was determined that this condition existed in numerous residential units and common areas throughout the North, Center, and West Wings of the Independent Living Section. The Center Wing consisted of community rooms and Independent Living residential units. The North and West Wings consisted of Independent Living residential units.

11. As the CCRC provided residential housing for seniors, many of whom had healthcare and assisted living needs, Greenfields was duly concerned that the simple replacement of the vapor barrier would be insufficient to protect the residents and their property from future water damage.

12. Greenfields and Lend Lease conducted an investigation concerning the necessary remedial actions to protect future residents from potential harm stemming from water intrusion. If replacement of the vapor barrier was not the sole cause of the water damage, simply replacing the non-specified vapor barrier with the specified vapor barrier would not prevent future water damage. Among the potential problems investigated was whether the stone façade was improperly constructed and was allowing water to infiltrate the wall. In that case, if future water damage did occur, Greenfields would face disruptive remedial work, possibly requiring relocation of residents of the CCRC.

13. Subsequent to the initial discovery of the water damage, Lend Lease and Greenfields were required to undertake a number of remedial actions to correct the physical damage caused to the Project. Such remedial actions included obtaining the expertise, manpower and materials to repair current damage to the Independent Living Section's electrical components, drywall, heating and cooling units, flooring, window treatments, and carpentry. This remedial work took several weeks to complete but was necessary to verify that all causes of water infiltration had been determined and properly corrected and to conduct the repairs in the most cost effective and least destructive manner. For example, while the non-specified vapor barrier was installed throughout the Independent Living spaces, the investigation ultimately determined it could remain in areas where the exterior wall was fiber cement siding rather than a stone facade, thereby saving significant time and expense. Greenfields had the contractual right to insist that the non-specified vapor barrier be removed and replaced everywhere it was installed but instead undertook the investigation necessary to determine that replacement was only necessary in areas having a stone façade exterior.

14. In addition to the investigation to determine the scope of the water damage and subsequent repairs, a primary delaying factor in completing the corrective work was that the County Building Inspectors, who were required to inspect the work at various intervals, were few in number. Passing such inspections was, however, a condition precedent to completing the work. As a practical matter, work could not continue or advance at the various intervals without first obtaining County approval. As a result, work was delayed due to Greenfields and Lend Lease being subject to the County Building Inspectors availability and Lend Lease could not complete certain tasks and move on without first obtaining the County's approval.

15. The corrective work involved two areas of the Project, the Independent Living Section's North and West Wings.

16. Lend Lease completed all the demolition, reconstruction and repair work necessary to replace the non-specified vapor barrier with the correct "smart" vapor barrier, all at the sole cost and expense of Lend Lease. Lend Lease submitted a claim for reimbursement to Philadelphia Insurance Company ("Philadelphia") pursuant to a Builder's Risk Insurance Policy for the Project and was paid part of the costs it incurred by Philadelphia.

17. Section 8.4 of the General Conditions of the Agreement provides for Lend Lease to pay Greenfield's specified actual damages for unexcused failure to achieve the required level of completion of the Work (as defined in the Agreement) by the applicable milestone date. The milestone dates are set forth in Exhibit A to the Agreement.

18. Exhibit A includes the following milestone dates:

A. Temporary certificate of occupancy for West Wing for lower level 1 ("LL1"), level 1 ("L1"), level 2 ("L2") (31 total units), and related common areas by October 31, 2011.

B. Temporary certificate of occupancy for West Wing for level 3 ("L3") (20 units) and related common areas by December 2, 2011.

C. Temporary certificate of occupancy for North Wing for LL1 and L1 (40 total units) by December 31, 2011.

D. Temporary certificate of occupancy for North Wing for L2 (28 units), by January 31, 2012.

19. The amount of damages owed for each day for late delivery is set forth in Exhibit J to the Agreement and is a percentage of the daily debt service for the Project that begins at 20% for the first 30 days, increases to 50% for the next 30 days, increases to 70% for the third 30 days and, beginning with the 91st day, is 100% of daily debt service. Debt service is agreed to be $26,000 per day in accordance with Exhibit J.

20. On January 20, 2012, a Certificate of Occupancy was issued by the Kane County Building and Zoning Division for the West Wing of Independent Living and, on January 31, 2012, residents took occupancy. Thus, the delay period for the West Wing of Independent Living was from October 31, 2011 to January 20, 2012.

21. On February 6, 2012, a Certificate of Occupancy was issued by the Kane County Building and Zoning Division for the North Wing of Independent Living and, on February 12, 2012, residents took occupancy. Thus, the delay period for the North Wing of Independent Living was from December 31, 2011 to February 6, 2012 for LL1 and L1 and from January 31, 2011 to February 6, 2012 for L2.

22. The total amount owed by Lend Lease to Greenfields for agreed upon damages related to debt service for unexcused delay is $180,179.00.

23. Additionally, in accordance with Section 8.4.3.1.2 of the General Conditions, Lend Lease owes actual damages incurred for delayed resident occupancy to a maximum of $115,000 per month.

24. The total amount owed for delayed resident occupancy by Lend Lease to Greenfields is $368,793.00.

25. The agreed upon damages were a fair and reasonable estimate of the actual damages expected to be incurred by Greenfield's as the result of delayed completion of the work by Lend Lease. The agreed upon damages are less than the actual damages suffered by Greenfield's for debt service and for delayed resident occupancy.

B. Expenses Incurred by Greenfields Due to Non-Specified Vapor Barrier

26. As previously stated, when water was discovered on the exterior side of the vapor barrier in the wall cavity, both Lend Lease and Greenfields hired independent experts to assist in determining the cause of the standing water.

27. Lend Lease hired Wiss, Janney, Elstner Associates, Inc. ("WJE") and Greenfields hired CTL Consulting, LLC ("CTL").

28. WJE and CTL thereafter collaborated to determine that the non-specified vapor barrier was the cause of the water and that there was no other cause of the water.

29. Pursuant to Section 12.2.1.1 of the General Conditions ("General Conditions") of the Agreement, Lend Lease is required to reimburse Greenfields for all costs Greenfields incurred for "additional testing and inspections and reasonable compensation for the Architect's services and expenses made necessary thereby."

30. Section 13.5.3 of the General Conditions requires Lend Lease to pay "all costs made necessary" by the failure of the Work to conform to the Contract Documents.

31. The amount incurred by Greenfields for the services of CTL was $97,168.67, all of which is attributable to testing and inspection related to the failure of Lend Lease to follow Contract Documents.

C. Frequent Breakdown Of The Condensing Units In The Building HVAC System

32. In January of 2012, Greenfields began experiencing frequent breakdowns in its building HVAC system.

33. Greenfields notified Lend Lease and the architect for the CCRC, Dorsky, Hodgson, Parrish & Yue (the "Architect"), via emails of the continuing breakdowns and the outages that Greenfields had been experiencing in connection with the building HVAC system.

34. After numerous meetings and discussions among Greenfields, Lend Lease, Flo-Tech Mechanical System ("Flo-Tech"), Lend Lease's HVAC subcontractor, the Architect, and the mechanical engineer who designed the HVAC system for the Project, no effective solution was provided to Greenfields. The continuing breakdown of the HVAC system persists through the present.

35. In October of 2012, Greenfields contracted with Primera Engineers, Ltd. ("Primera") to conduct a thorough and comprehensive test of performance of the five (5) Air Handling Units ("AHUs"), the two (2) Make Up Air Units ("MAUs"), and the two (2) Return Air Units ("RTUs") of the building HVAC system.

36. Primera issued a report listing the issues with the AHUs, the MAUs, and the RTUs.

37. Although Greenfields corrected the issues listed in the Primera Report, Greenfields continued to experience frequent breakdown of the building HVAC system.

38. On May 22, 2012, a service report that was sent to Flo-Tech Mechanical System ("Flo-Tech"), the HVAC subcontractor that installed the building HVAC system under its

subcontract with Lend Lease, indicated that the AHU 2 and its condensing unit had a number of installation issues associated with its breakdown. The issues included (a) high discharge pressure on system 1, (b) low suction pressure on system 2, (c) incorrect wiring between the condensing unit's thermostat to the AHU's solenoid valve circuits, and (d) incorrect control on the solenoid valve by the control relay. Furthermore, Flo-Tech also indicated wiring issues with the RTUs. A copy of the service report is attached as **Exhibit C**.

39. On June 5, 2013, All Season's, Greenfields' HVAC maintenance contractor, ran a refrigerant pipe sizing calculation on the Condensing Unit ("CU") No. 5. The calculation showed that the existing piping connected to the CU No. 5 was oversized, creating inadequate velocity in the oil return line to the compressors. It was noted in the calculation that if the piping size was not corrected, the compressors in the CU No. 5 would continue to fail.

40. On August 13, 2013, All Season's met with the manufacturer's technical representative on site to check the wiring of all the CUs. York is the manufacturer of the HVAC equipment that was installed at Greenfields. York's representative found that the wiring of all CUs was incorrect, causing lock outs with low ambient operations and low voltage connected to the CUs. Additionally, York's representative, Mr. Bishop, found that the 40-ton split system CU was also wired incorrectly for normal operation, causing frequent failure of compressors within the split system CU. A copy of Mr. Bishop's on-site observation report dated August 14, 2013 is attached as **Exhibit D**.

41. On August 22, 2013, All Season's provided Greenfields a report on the pipe sizing of all refrigerant piping connecting to the CUs in the building HVAC system. The report concludes that the majority of the piping connected to the CUs was oversized and some of the

piping needed long line set accessory kits. A copy of All Season's August 22, 2013 report is attached as **Exhibit E**.

42. Greenfields has incurred $49,856.00 for service calls to repair the breakdowns, the replacements of the CUs, and the engineering analysis by Primera.

43. The cost to correct the issues described above is estimated at an additional $244,660.00.

44. Lend Lease failed to install the correct size of piping to the CUs and installed incorrect wiring within the CUs at the Project causing damages to Greenfields in the amount of $294,516.00.

D. Inadequate Cooling To The IT Closets And The Elevator Machine Room

45. The CUs that provide cooling to the IT Closets and the Elevator Machine room are located outside of the building and are exposed to outdoor conditions.

46. The IT Closets house network servers, network switches, and other computer network equipment which generate a significant amount of heat. The equipment needs constant cooling to keep it from overheating.

47. The Elevator Machine room houses the elevator equipment which generates a significant amount of heat. The elevator equipment needs constant cooling to keep it from overheating.

48. During the winter seasons when the outside temperature is below a certain temperature, the CUs serving the IT Closets and the Elevator Machine room stop functioning and do not provide any cooling to the IT Closets and the Elevator Machine room.

49. The CUs located outside of the building are missing low ambient control kits which allow the CUs to continue their operations during low outside temperatures.

50. Furthermore, some of the CUs located outside the building are not only missing low ambient control kits, but they are models that cannot be equipped with low ambient control kits at all ("Non-conforming CUs").

51. The cost of installing the missing low ambient control kits is estimated at $1,755.00

52. The cost to replace the Non-conforming CUs with the correct CUs with the low ambient control kits is estimated at $65,160.00.

53. Lend Lease failed to install the low ambient control kits to the CUs and installed Non-conforming CUs at the Project, causing damages to Greenfields in the amount of $66,915.00.

E. Frequent Burn-Out Of The Sequencers In The VTAC Units

54. Since December of 2012, Greenfields experienced continuing problems with the VTAC units throughout the Project.

55. Greenfields noticed that the sequencers of the VTAC units kept burning out.

56. All Season's, Greenfields' HVAC maintenance contractor, conducted a visual check on all VTAC units and discovered that the transformers of VTAC units were wired to the 240 volt connection tab while the building uses 208 volt power distribution.

57. On March 25, 2014, Greenfields hired All Season's to reconnect all the VTAC units to the correct 208 voltage connection tab.

58. Greenfields incurred a total of $9,741.00 to replace the sequencers and to re-connect the VTAC units to the correct voltage connection tab.

59. Lend Lease failed to connect the VTAC units to the correct voltage tab causing damages to Greenfields in the amount of $9,741.00.

F. NFPA 101 Life Safety Code Violations

60. On November 7, 2013, IDPH conducted a Life Safety Code inspection at Greenfields as part of the Initial Certification survey to determine Greenfields' compliance with federal certification requirements for nursing homes participating in the Medicare/Medicaid programs ("Medicare/Medicaid Certification").

61. On November 22, 2013, IDPH notified Greenfields that Greenfields was not in "Substantial Compliance" with the regulatory requirements as found in Title 42, Code of Federal Regulations.

62. IDPH's determination was based on a number of NFPA 101 Life Safety Code violations. A copy of the IDPH's survey listing the violations ("IDPH Survey") is attached as **Exhibit F.**

63. Among all the NFPA 101 Life Safety Code violations listed in the IDPH Survey, the following are due to improper construction or defective work that does not comply with the Contract Documents:

A. K011 – The required 2-hour fire rating in the common wall was not properly provided because (a) there were "holes in the 2-hour fire wall in the beauty shop above the ceiling tile around ducts and pipes; and (b) drywall was missing in the 2-hour rated ceiling in the air handling unit closet of room 217 [3] and (c) there was no UL rating available for the rated ceiling assembly.

[3] Greenfields later conducted a survey of all the air handling unit closets in the assisted living units and discovered that the missing drywall issue was systemic throughout all of the assisted living units.

B. K020 – The required 1-hour rated enclosures for the HVAC ducts were not maintained in the attic area prior to the ducts penetrating the roof.

C. K025 – Smoke barriers were not properly constructed because there were holes and gaps in the smoke wall above the ceiling tile in room 252.

D. K033 – The 1-hour rated stairwell enclosures in all three stairwells were not maintained because there were holes in the stairwell enclosures.

E. K054 – The smoke detectors in the corridor were installed too close – less than three feet – to the HVAC intake/outlet grille.

64. Greenfields, at its own expense, repaired these construction defects in order to pass the Medicare/Medicaid Certification. The total costs of the corrective work was $28,437.32.

65. Lend Lease failed to properly install fire-rated enclosures in various locations and the smoke detectors at proper locations according to the Contract Documents.

66. Lend Lease's failure caused damages to Greenfields in the amount of $28,437.32.

G. Plumbing Piping Cracks and Dislocation

67. In early to mid-2015, Greenfields received a number of resident reports in regard to water leaks within the walls.

68. All of the water leak reports were related to the two plumbing waste stacks located at the north end of the building.

69. The leaks were from cracks that were on the top side of the connectors where the branch lines connected to the vertical mains. All plumbing pipes and connectors are PVC piping which is susceptible to cracking when under physical stress.

70. There are areas of wall and ceiling cracking consistent with the locations of the two plumbing waste stacks.

71. Greenfields observed that part of the exposed suspended plumbing lines located in the garage at the north end of the building have shifted upward and are no longer resting on the pipe supporters.

72. Bad soil conditions were discovered in this area of the Project during construction in 2010. The soil was not stable enough for the construction of the Project and was determined to be unsuitable.

73. Lend Lease was directed to stabilize and compact the soil to an adequate level that is suitable for the construction of the Project via Scope Change Requests No. 2 and No. 4.

74. The cracks in the piping connectors, the walls, and the ceiling as well as the up-shifting of the plumbing lines in the garage at the north end of the building indicate that the North end of the building may be settling at a larger degree than normal tolerance and at a greater rate than the rest of the building.

75. Inadequate level of compaction and stabilization of the soil during construction in that area is a potential cause of the cracking.

76. Greenfields has retained a forensic architect to investigate the cause of the up-shifting of the plumbing lines and the cracks on the pipe connectors at the two waste lines, in the walls, and the ceilings, and to determine a solution to remediate this issue.

77. Failure by Lend Lease to stabilize and compact the bad soil to an adequate level in the Northern area of the Project may have caused this issue and damages to Greenfields.

78. The amount of damage Greenfields will sustain is to be determined.

H. Architect's Claim

79. The Architect has asserted a claim for alleged additional services it was required to perform related to the matters set forth in this Complaint.

80. The amount of the Architect's claim for the additional services it alleges it was required to perform is $200,706.00 (the "Architect Claim").

81. To the extent that the alleged additional services were required because of the failure of the Work to conform to the Contract Documents, any amounts recovered by the Architect on the Architect Claim are required by Section 13.5.3 of the General Conditions to be paid by Lend Lease to Greenfields.

I. Summary of Damages

82. Greenfields suffered damages for its delayed occupancy of the CCRC and in investigating the water damage. Greenfields has incurred and will incur costs to repair or correct the issues noted above. The damages and costs are as follows:

	Issues	Damages Claimed
A.	Delayed resident Occupancy	$368,793.00
B.	Investigation Costs	$97,168.67
C.	Frequent Breakdown Of The Condensing Units In The Building HVAC System	
1.	Service Calls, Replacements Of The Cus, And Engineering Analysis	$49,856.00
2.	Refrigerant Piping Replacement	$244,660.00
D.	Inadequate Cooling To The I.T. Closets And The Elevator Machine Room	
1.	Installation Of Low Ambient Control Kits	$1,755.00
2.	Replacement Of Non-Conforming Cus	$65,160.00
E.	Frequent Burn-Out Of The Sequencers In The Vtac Units	$9,741.00
F.	NFPA 101 Life Safety Code Violations	$28,437.32
	Subtotal:	**$865,570.99**

G.	Plumbing Piping Cracks And Dislocation	To be determined
	Total:	**To be determined**

COUNT I – BREACH OF CONTRACT FOR LATE COMPLETION AGAINST LEND LEASE

83. Greenfields incorporates its allegations in Paragraphs 1 through 25 of this Complaint as its allegations to this Paragraph.

84. Lend Lease's liability arises from its contractual obligations under the Agreement. Section 8.4 of the General Conditions, together with Exhibits A and J to the Agreement, set forth Lend Lease's contractual duties. Section 8.4 is set forth in full below. Exhibits A and J are summarized previously herein and are attached as part of the Agreement, **Exhibit B.**

> 8.4 DAMAGES FOR DELAYED COMPLETION
>
> 8.4.1 The Contractor hereby acknowledges that the Owner shall suffer significant loss, expense and damages in the event that Contractor's Work is not completed within the time allowed by Article 4.3 of the Basic Agreement Document.
>
> 8.4.2 The Contractor recognizes that each and every one of the interim completion dates of the 267 units (comprising 147 Independent Living, 51 Assisted Living, 26 Memory Support assisted living and 43 Skilled Nursing units) which represent Substantial Completion of the Project are critical. Owner and Contractor agree that in the event Contractor fails to meet any dates referenced in the attached Exhibit A, or complete any portion or phase of the work within the time allowed by Section 4.3 of the A111 for such portion or phase of the work, Owner will incur damages as a result thereof.
>
> 8.4.3.1 In the event the Contractor fails to deliver any units as required by the Schedule attached as Exhibit A ("Schedule"), including any time extensions to which the Contractor is entitled, the Contractor agrees to reimburse the Owner for the following actual damages incurred by Owner:
>
> .1 The cost of debt service, not exceeding the amounts summarized in the Schedule below as measured by the number of

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days from the scheduled date of Substantial completion for the units involved for each phase until such unit has been determined to be substantially complete as provided for herein;

.2 The actual cost of delayed resident occupancy incurred by the Owner measured from the individual scheduled date of resident move in to the actual date of move in, not to exceed $115,000 per month;

8.4.3.2. Notwithstanding anything in the foregoing, the Contractor's limit of liability with respect to all items is set forth in 8.4.3.1.1, and 8.4.3.1.2 above is 400% of Contractor's Fee in the aggregate. Owner agrees that it shall not send 60 day move-in notices to residents, if at least 30 days before the time for sending such notices, it is advised by Contractor not to send them. This delay shall continue until Contractor provides a release date for such notices, which it will provide at the earliest practicable date. Owner further agrees that it will not release its operational staff for initial opening of the Project until such time that Contractor gives notice of the date thirty days from which it shall achieve Substantial Completion. Contractor shall not be responsible for any damages to Owner that could have been avoided/mitigated by Owner but for its failure to comply with the foregoing. Damages for debt service shall apply by phase and only to those individual units scheduled to be delivered but not actually delivered provided that units not delivered do not delay occupancy of all other units scheduled to be delivered for that area as defined in Exhibit J and Contractor has notified Owner 60 days prior that such specific unit would not delivered with that area. Additionally, for any units that are not delivered in any area that units are scheduled to be delivered, the nature of the Work to be completed shall not be disruptive to the residents or the management staff. Debt service damages are based on the daily debt service divided by the total number of units (267 units) multiplied by the percentage of debt services applicable as tabulated in Exhibit J multiplied by the number of units scheduled to be delivered but not actually delivered.

8.4.3.3 Contractor may request use of the Contingency and buyout savings pursuant to paragraph 5.2.1 of the A111 Agreement to pay for additional project management, supervision, overtime and other resources in order to meet its occupancy dates and to otherwise mitigate the amount of such damages.

8.4.3.4 Contractor does not guarantee IDPH Certification dates for any portion of the facility, and, except to the extent caused by Contractor fault under other provisions of the Contract Documents, and such fault is uncured at the time of Substantial Completion of the relevant work, any damages associated with a failure of IDPH Certification independent of contractor's specific requirements under the Contract Documents are expressly and specifically excluded from Contractor's responsibility.

8.4.3.5 Daily limitations of liability:

.1 Contractor's maximum daily debt service liability for delay in completion is $26,000 (See 8.4.3.1.1)

.2 Contractor shall be responsible for the following percentages of Owner's actual daily debt service based upon the following number of days delay in completion of the Project in accordance with Exhibit A:

1-30 days	31-60 days	61-90 days	91+ days
20%	50%	70%	100%

[Refer to Exhibit J]

85. Lend Lease breached its contractual duties when it failed to complete all parts of the Project in a timely manner specifically:

A. Lend Lease completed LL1, L1 and L2 of the West Wing eighty-one (81) days after the milestone date.

B. Lend Lease completed L3 of the West Wing forty-nine (49) days after the milestone date.

C. Lend Lease completed LL1 and L1 of the North Wing thirty-seven (37) days after the milestone date.

D. Lend Lease completed L2 of the North Wing six (6) days after the milestone date.

86. Greenfields has suffered damages in the amount summarized above due to Lend Lease's breaches of the Agreement.

WHEREFORE, Greenfields respectfully requests that this Court enter an order in favor of Greenfields granting the following relief:

A. Contractually agreed upon damages owed as a result of the late completion of milestones by Lend Lease;

B. All attorneys' fees and costs incurred by Greenfields in connection with the investigation and prosecution of this matter; and

C. Such other and further relief this Court deems just and appropriate.

COUNT II – BREACH OF CONTRACT AGAINST LEND LEASE

87. Greenfields incorporates its allegations in Paragraphs 1 through 82 of this Complaint as its allegations to this Paragraph.

88. Lend Lease's liability arises from its contractual obligations under the Agreement. The provisions in the General Conditions that set forth Lend Lease's contractual duties are as follows:

> § 3.2.1 [T]he Contractor shall carefully study and compare the various Drawings and other Contract Documents relative to that portion of the work . . . , *any errors, inconsistencies or omissions discovered by the Contractor shall be reported promptly to the Architect as a request for information* . . . . (Emphasis added.)
>
> § 3.2.2 Subject to its own duty to exercise ordinary care, the Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, building codes, and rules and regulations, but *any nonconformity discovered by or made known to the Contractor shall be reported promptly to the Architect.* (Emphasis added.)
>
> § 3.2.3 If the Contractor fails to perform the obligations of Sections 3.2.1 and 3.2.2, the *Contractor shall pay such costs and damages to the Owner as would have been avoided if the Contractor had performed such obligations.* The Contractor shall not be liable to the Owner . . . for damages resulting from errors, inconsistencies or omissions in the Contract Documents . . . unless the Contractor recognized such error, inconsistency, omission or difference and knowingly failed to report it to the Architect. (Emphasis added.)

> § 3.5.1 The Contractor warrants to the Owner that . . . the Work will be *free from defects* not inherent in the quality required or permitted, and that the Work will *conform to the requirements of the Contract Documents*. Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. (Emphasis added.)
>
> § 3.5.5 The Contractor is responsible for the coordination and timely completion of its own warranty obligation without additional cost to Owner.

89. Lend Lease breached its contractual duties when it failed to construct the Project free from defects or to inform the Architect of the inconsistencies before installation of certain HVAC equipment in the following circumstances:

A. Lend Lease failed to install the correct size of piping to the majority of the CUs in the building HVAC system, to wire the 40-ton split system CU correctly, and to install the AHUs and the RTUs correctly. Lend Lease's failure has caused frequent breakdowns of the building HVAC system and higher than usual replacement rate of the compressors in the CUs.

B. Lend Lease failed to install low ambient control kits in the CUs serving the IT Closets and the Elevator Machine room and installed Non-conforming CUs that could not be equipped with low ambient control kits. Lend lease's failure has caused lack of cooling to the IT Closets and the Elevator Machine room during the winter seasons.

C. Lend Lease failed to wire the transformers of the VTAC units to the correct voltage tab. Lend Lease's failure caused frequent burn-out of the sequencers in the VTAC units. Greenfields repaired this issue at its own expense.

D. Lend Lease failed to construct the Project in accordance to the Contract Documents and in compliance with the NFPA 101 Life Safety Code resulting in a number of NFPA 101 Life Safety Code violations during Greenfields' Medicaid/Medicare Certification. Lend Lease's failure caused Greenfields to incur expenses to correct the violations.

E. Lend Lease failed to compact and stabilize the bad soil to an adequate level for construction of the Project causing cracks in the plumbing lines connectors, the walls, and the ceiling, and upshifting of the plumbing lines in the garage at the North end of the building. Lend Lease's failure has caused Greenfields to incur expenses to investigate the issues, determine the remediation solution, and remediate the issue to prevent further damages.

90. Greenfields has suffered damages in the amount summarized above due to Lend Lease's breaches of the Agreement.

WHEREFORE, Greenfields respectfully requests that this Court enter an order in favor of Greenfields granting the following relief:

A. All expenses that Greenfields has incurred in investigating, testing, correcting or repairing the Project as detailed above due to Lend Lease's breaches of contract;

B. All expenses that Greenfields will incur in correcting or repairing the Project as detailed above due to Lend Lease's breaches of contract;

C. All amounts owed to the Architect on the Architect Claim;

D. All attorneys' fees and costs incurred by Greenfields in connection with the investigation and prosecution of this matter; and

E. Such other and further relief as this Panel deems just and appropriate.

COUNT III –NEGLIGENCE AGAINST LEND LEASE

91. Greenfields incorporates its allegations in paragraphs 1 through 82 of this Complaint as its allegations to this paragraph.

92. Lend Lease's liability arises from Lend Lease's breach of the standard of care established under the Agreement. The provision in the General Condition sets forth Lend Lease's standard of care as follows:

> § 3.2.2 *Subject to its own duty to exercise ordinary care*, the Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, building codes, and rules and regulations, but *any nonconformity discovered by or made known to the Contractor shall be reported promptly to the Architect.* (Emphasis added.)

93. Lend Lease was negligent when it failed to exercise ordinary care during its construction in the following circumstances:

A. Lend Lease failed to verify with the architect the correct sizing for the piping to the CUs in the building HVAC system and the correct wiring or sequencing of the 40-ton split system CU. Lend Lease's failure has caused frequent breakdowns of the building HVAC system and higher than usual replacement rate of the compressors in the CUs.

B. Lend Lease failed to verify with the architect the correct CUs servicing the IT Closets and the Elevator Machine room. Lend lease's failure has caused lack of cooling to the IT Closets and the Elevator Machine room during the winter seasons.

C. Lend Lease failed to field verify the building voltage and verify with the Architect before wiring the transformers of the VTAC units to the incorrect voltage tab.

Lend Lease's failure caused frequent burn-out of the sequencers in the VTAC units. Greenfields repaired this issue at its own expense.

D. Lend Lease failed to construct the Project in accordance to the Contract Documents and in compliance with the NFPA 101 Life Safety Code without verification with the Architect resulting in a number of NFPA 101 Life Safety Code violations during Greenfields' Medicaid/Medicare Certification. Lend Lease's failure caused Greenfields to incur expenses to correct the violations.

E. Lend Lease failed to compact and stabilize the bad soil to an adequate level for construction of the Project causing cracks in the plumbing line connectors, the walls, and the ceiling, and upshifting of the plumbing lines in the garage at the North end of the building. Lend Lease's failure has caused Greenfields to incur expenses to investigate the issues, determine the remediation solution, and remediate the issue to prevent further damages.

94. Greenfields has suffered damages due to Lend Lease's negligence and failure to meet its standard of care its construction of the Project.

WHEREFORE, Greenfields respectfully requests that this Court enter an order in favor of Greenfields granting the following relief:

A. All expenses that Greenfields has incurred in correcting or repairing the Project as detailed above due to Lend Lease's negligence;

B. All expenses that Greenfields will incur in correcting or repairing the Project as detailed above due to Lend Lease's negligence;

C. All attorneys' fees and costs incurred by Greenfields in connection with the investigation and prosecution of this matter; and

D. Such other and further relief as this Panel deems just and appropriate.

DEMAND FOR JURY TRIAL

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, the Plaintiff demands trial by jury in this action of all issues so triable.

FRIENDSHIP VILLAGE OF MILL CREEK,
NFP d/b/a GREENFIELDS OF GENEVA

By: /s/ Charles B. Lewis
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